

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
)	
Applicant for Modification of Various	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028, 0004193328,
	)	0004354053, 0004309872, 0004310060,
Applicant with ENCANA OIL AND GAS (USA),	)	0004314903, 0004315013, 0004430505,
INC.; DUQUESNE LIGHT COMPANY; DCP	)	0004417199, 0004419431, 0004422320,
MIDSTREAM, LP; JACKSON COUNTY	)	0004422329, 0004507921, 0004153701,
RURAL MEMBERSHIP ELECTRIC	)	0004526264, 0004636537,
COOPERATIVE; PUGET SOUND ENERGY,	)	and 0004604962
INC.; ENBRIDGE ENERGY COMPANY,)	
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE – MID CONTINENT, LLC;)	
DENTON COUNTY ELECTRIC)	
COOPERATIVE, INC., DBA COSERV)	
ELECTRIC; AND SOUTHERN CALIFORNIA)	
REGIONAL RAIL AUTHORITY)	
 To: Marlene H. Dortch, Secretary Attention: Chief Administrative Law Judge Richard L. Sippel		

**CHOCTAW’S RESPONSE TO HAVENS-SKYTEL
FIRST MOTION UNDER ORDER 13M-19**

Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (hereinafter collectively “Choctaw”) hereby respond to two bankruptcy arguments set forth in the “Havens-Skytel First Motion Under Order 13M-19” (“Initial Havens Motion”).¹ Mr. Havens argues that

¹ Choctaw previously moved “to intervene solely to ‘benefit the Presiding Judge with information in its possession relating to the Bankruptcy Order and that status of the applications before the Commission’s Wireless Telecommunications Bureau seeking *Second Thursday*

(i) Maritime Communications/Land Mobile, LLC (“Maritime”) lacks the authority to file the Joint Motion for Summary Decision (“Joint Motion”),² as well as the associated stipulation surrendering licenses, because such authority resides with the Liquidating Agent named in the bankruptcy plan (“Plan”), and (ii) the Joint Motion cannot be granted without the prior approval of the Bankruptcy Court. There are no merits to these arguments.

I. THE JOINT MOTION DID NOT REQUIRE THE APPROVAL OF THE LIQUIDATING AGENT

The Initial Havens Motion claims that only the Liquidating Agent named in the plan can consent to the surrender of licenses as contemplated in the Joint Motion.³ This is incorrect. As noted in the attached memorandum from Choctaw’s bankruptcy council, neither the Reorganization Plan, nor bankruptcy law, require that the Liquidating Agent approve the surrender of certain site-based licenses contemplated in the Joint Motion and associated stipulation.⁴ The Liquidating Agent’s rights under the Plan are subordinate to the rights of Choctaw and Maritime to carry out the liquidation of the Licenses.⁵

Nevertheless, Choctaw and Maritime have informed the Liquidating Agent about the proposed transaction.

relief.” See *Order*, FCC 13M-4 (quoting Choctaw’s Response to Show Cause Order at 4). Choctaw was granted party status “for the limited purpose of updating the Presiding Judge on the status of its applications.” *Id.* The *Order* contemplated expanding Choctaw’s role for good cause shown. *Id.* Because the Havens-Skytel Motion raises issues relating to the bankruptcy proceeding and Choctaw’s role in that proceeding, Choctaw hereby seeks leave to file the instant response limited to the interplay of the bankruptcy proceeding and the Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G (“Joint Motion”).

² Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G (filed Dec. 2, 2013).

³ See Initial Havens Motion at 22-23.

⁴ See Attachment A.

⁵ *Id.* at 2.

II. BANKRUPTCY LAW DOES NOT PRECLUDE THE JOINT MOTION

The Initial Havens Motion incorrectly states that bankruptcy law precludes Maritime from entering into the Joint Motion and that any surrender of licenses requires the approval of the Bankruptcy Court.⁶ Mr. Havens appears to be arguing that, because the Joint Motion and associated stipulation propose to surrender former Maritime licenses, such a surrender of “assets” would require approval of the Bankruptcy Court. As noted in Attachment A, no such approval is required.

Moreover, Mr. Havens should be estopped from arguing that the Joint Motion and associated stipulation require the approval of the Bankruptcy Court. Mr. Havens has argued consistently throughout this proceeding that the site-based licenses subject to Issue (g) have automatically terminated because, according to Mr. Havens, they have been permanently discontinued. Under this theory, if a license automatically terminated due to permanent discontinuance, there is no license that can be transferred to Choctaw. Mr. Havens cannot have it both ways. If licenses have automatically terminated, as he alleges, there is nothing for the Bankruptcy Court to approve.

⁶ See Initial Havens Motion at 23-30.

CONCLUSION

As discussed herein, neither the Plan nor bankruptcy law preclude grant of the Joint Motion. Consistent with the objective of the Bankruptcy Plan – to repay creditors as quickly as possible, Choctaw supports an expeditious grant of the Joint Motion.

Respectfully submitted,

CHOCTAW TELECOMMUNICATIONS, LLC
CHOCTAW HOLDINGS, LLC

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December 16, 2013

CERTIFICATE OF SERVICE

I, Annetta Washington, do hereby certify that on this 16th day of December 2013, the foregoing "RESPONSE TO HAVENS-SKYTEL FIRST MOTION UNDER ORDER 13M-19" was served by email and first class mail, postage prepaid, on the following persons:

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/s/ Annetta Washington
Annetta Washington

Attachment A

MEMORANDUM

TO: Robert Kirk
FROM: Bill D. Bensinger
DATE: December 16, 2013
RE: Maritime Telecommunications/Land Mobile, LLC Bankruptcy Plan and Confirmation

The purpose of this Memorandum is to respond to two bankruptcy arguments set forth in the “Havens-Skytel First Motion Under Order 13M-19” (“Initial Havens Motion”). Mr. Havens argues that (i) Maritime Communications/Land Mobile, LLC (“Maritime”) lacks the authority to file the Joint Motion for Summary Decision (“Joint Motion”),¹ as well as the associated stipulation surrendering certain site-based licenses, because such authority resides with the Liquidating Agent named in the bankruptcy plan (“Plan”), and (ii) the Joint Motion cannot be granted without the prior approval of the Bankruptcy Court. As discussed below, there are no merits to these arguments.

I. The joint motion did not require the approval of the liquidating agent

The Initial Havens Motion claims that only the Liquidating Agent named in the plan can consent to the surrender of licenses as contemplated in the Joint Motion.² This is incorrect. Neither the Reorganization Plan, nor bankruptcy law, require that the Liquidating Agent approve

¹ Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G (filed Dec. 2, 2013).

² See Initial Havens Motion at 22-23.

the surrender of certain site-based licenses contemplated in the Joint Motion and associated stipulation.

The Liquidating Agent's rights under the Plan are subordinate to the rights of Choctaw and Maritime to carry out the liquidation of the Licenses. The Liquidating Agent's rights only extend to assets that the Debtor and Choctaw do not administer under the Plan. Thus the Plan provides that "*Unless otherwise dealt with under this Plan* or by a prior Final Order, on the Effective Date all property of the Estate" will be subject to the Liquidating Agent's rights.³ The purpose of this provision was to vest any remaining assets, that is any assets not otherwise dealt with under the Plan, in the Liquidating Agent for the Liquidating Agent's administration on behalf of the creditors.

These remaindered assets do not include the Debtor's licenses because the Plan "deals with" such Licenses.⁴ The Plan provides that the Debtor will assign such Licenses to Choctaw for Choctaw's liquidation and ultimate payment to the creditors.⁵ The Debtor and Choctaw's determination to surrender some licenses in an effort to expedite the final transfer of the Debtor's remaining licenses is the manner in which the Debtor is "[dealing] with" these licenses in accordance with the terms of the Plan. Therefore, because the Plan deals with the Licenses, the Liquidating Agent has no authority over the Licenses or the proposed transaction.

³ Plan, 22 (emphasis added).

⁴ See Plan, 10 ("the Debtor will transfer, assign, and sell to [Choctaw] all of the Debtor's right title, and interest in the FCC Spectrum Licenses. Such transfer is and will be subject to final approval by the FCC.").

⁵ *Id.*

II. Bankruptcy law does not preclude the joint motion

The Initial Havens Motion incorrectly states that bankruptcy law precludes Maritime from entering into the Joint Motion and that any surrender of licenses requires the approval of the Bankruptcy Court.⁶ Mr. Havens appears to be arguing that, because the Joint Motion and associated stipulation propose to surrender former Maritime licenses, such a surrender of “assets” would require approval of the Bankruptcy Court. No such approval is required.

In its Order Confirming Plan of Reorganization, Docket No. 980 (the “Confirmation Order”), the Bankruptcy Court recognized that “the Court’s ruling and orders herein are contingent on what the FCC ultimately decides regarding the subject FCC licenses and the Debtor’s rights to hold and/or transfer same.”⁷ Thus, although the Bankruptcy Court confirmed the Plan, it nevertheless recognized that the Commission would make the final determination as to the disposition of the Licenses. The Presiding Judge thus has the authority to address matters relating to the disposition of the Maritime licenses.

The main objective of the Bankruptcy Plan is to repay creditors and to do so as quickly as possible. Consistent with this objective, Choctaw and Maritime entered into negotiations with the Bureau in the hopes of reaching a settlement in this case. Choctaw and Maritime determined that it would be in the best interest of the creditors to surrender certain licenses – licenses which Mr. Havens has steadfastly maintained no longer exist due to permanent discontinuance. If these licenses were not surrendered, a more lengthy hearing would be necessary – at a substantial additional expense – to determine whether the licenses remained valid. The expense associated

⁶ See Initial Havens Motion at 23-30.

⁷ Confirmation Order, 11-12.

with a lengthy hearing on these licenses was a certainty, but there was no guarantee that all of the licenses would be retained at the conclusion of the hearing. Choctaw and Maritime both concluded that maximum recovery by creditors would be obtained by quickly resolving Issue (g) and clarifying which site-based licenses, which assets, remain at issue and therefore subject to *Second Thursday* relief. Such action is fully consistent with bankruptcy law and the Plan.

CONCLUSION

For the foregoing reasons, neither the Plan nor bankruptcy law precludes grant of the Joint Motion or requires the prior approval of the Liquidating Agent or the Bankruptcy Court.